THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.3621 of 2000

02.11.2005

Between:

1. Yegu Rosaiah, S/o. Ankaiah

and others

… Petitioners

AND

The Special Deputy Collector (Land Acquisition),

Somasila Project, Unit 4, Rajampet.

… Respondent

ORDER:

There are one hundred and ninety two (192) petitioners in this writ petition. All of them seek a direction to the sole respondent to re-determine the compensation in respect of the petitioners' lands and trees in reach No.2, Kothuru village on par with the lands covered by O.P. No.2311 of 1988 dated 11.3.1992 on the file of the Court of the Subordinate Judge, Rajampet, Kadapa District.

Government of Andhra Pradesh issued notification on 29.12.1977 under Section 4(1) of Land Acquisition Act, 1894 (the Act, for short) for acquiring various extents of the lands of the petitioners for Somasila project. The respondent herein on 26.5.1980 passed number of awards with respect to different reaches in which lands were acquired. The lands of the petitioners were also acquired. They did not, however, seek any reference to the Civil Court under Section 18 of the Act but some other land owners in other reaches sought reference in O.P.No.2311 of 1988 on the file of the Court of the Subordinate Judge, Rajampet. The said Court passed order on 11.3.1992 enhancing the compensation. The petitioners allegedly obtained certified copy of the award and submitted applications under Section 28-A of the Act for re-determining the compensation in accordance with the judgment of the civil court. As the same was not done, the petitioners filed the present writ petition on 09.2.2000 for the relief as noticed hereinabove.

The respondent has filed counter affidavit denying various allegations made in the writ petition. It is further stated that petitioner Nos.26, 30, 49, 53, 119, 161, 165, 175 and 176 have already availed the remedy under Section 18 of the Act and therefore their applications under Section 28-A of the Act cannot be entertained. The writ petition was also opposed on the ground that it is barred by delay and laches as

the same is filed after lapse of about eight years. The award was passed in 1980 and the records could not be traced in the office of the respondent and that taking advantage of non-availability of the records, the petitioners filed the present writ petition to gain wrongful compensation.

A reply affidavit is filed on behalf of the petitioners. It is stated that all the petitioners have filed individual applications and that the writ petition is not barred by delay and laches. While alleging that the petitioners filed applications under Section 28-A of the Act within time, they further allege as under.

> The respondent promised to redetermine. In fact he issued notices Ref.No.2311 under Form 7-A to appear before him on 17.7.1995 (L.A) recorded our statements. Again we were issued notices dated 20.8.1999 in Form 7-A to appear on 29.8.1999. Accordingly, we appeared and our statements were recorded by the respondent. I could not file the copies of the said notices as the petitioners had settled in many villages and I could not collect them earlier. The last notice was dated 20.8.1999 and we appeared on 29.8.1999 as per the notices. We approached this Honourable Court within six months from 29.8.1999 and as such there are no latches on our part.

Learned Counsel for the petitioners, Sri K.Soma Konda Reddy, strenuously contends that though the acquisition relates to the year 1977, the petitioners did not receive adequate compensation as was paid to other similarly situated land owners, who approached the civil court under Section 18 of the Act. He submits that after filing of the applications, the respondent issued notices, the petitioners appeared before the respondent and when no orders are passed under Section 28-A of the Act, the petitioners filed the writ petition. Therefore, there is no delay and laches. Alternately he submits that even if a direction is issued now, the same would not in any manner cause prejudice to the respondent or the Government. **Per contra**, the learned Assistant Government Pleader for Revenue (L.A.), Sri Purushotham Reddy, submits in the matter of land acquisition, the delay and laches are crucial in deciding the rights of the petitioners. He placed reliance on **State of Maharashtra v. Digambar**, **C. Padma v. Dy. Secretary to the Government of Tamilnadu** and **Municipal Council, Ahmednagar v. Shah Hyder Baig**.

The admitted facts in this case are these. The notification for acquiring the petitioners' lands in reach No.2 of Somasila project was issued on 29.12.1977. The award was passed on 26.5.1980 and whatever be the reason, the reference under Section 18 of the Act was made after a period of eight years in O.P.No.2311 of 1988. The civil court delivered its judgment on 11.3.1992 enhancing compensation. The Counsel for petitioners filed application before the civil court for certified copies of judgment and decree in O.P. No.2311 of 1988 and after obtaining a copy thereof, submitted a letter dated 08.7.1992 to the respondent allegedly enclosing all the applications of the claimants belonging to Kothuru village in reach No.2. Each of the petitioners did not file any individual application enclosing a copy of the order of the civil court. According to the learned Counsel for the petitioner, the certified copy of the order in O.P.No.2311 of 1988 was received on 20.5.1992 and the Counsel for

the petitioners submitted all the applications on 09.7.1992. As per Section 28-A of the Act, the respondent has to conduct enquiry after giving notice to all persons interested, give them a reasonable opportunity of being heard and make an award re-determining the compensation payable to applicants. When such enquiry was not conducted as per Section 28-A(2), it was expected of the petitioners to immediately seek redressal before appropriate Court or Forum. Curiously the petitioners kept quiet for about eight years and filed the present writ petition only on 09.2.2000 before this Court. Therefore, certainly there is delay on the part of the petitioners.

In the reply affidavit filed on behalf of the petitioners, while denying the allegation that there is delay on the part of the petitioners, it is stated that respondent promised to redetermine the compensation after receiving the applications under Section 28-A of the Act. It is further alleged that the petitioners were issued notices in Form 7-A to appear before the respondent on 17.7.1995 and the petitioners appeared before the respondent. It is also alleged that again the respondent issued notices on 20.8.1999 in Form 7-A to appear on 29.8.1999 but thereafter no further action was taken. These statements and allegations cannot help the petitioners. If the respondent issued notices in 1995 and conducted enquiry on 17.7.1995, there was no necessity to the respondent again to issue notices on 20.8.1999 proposing to conduct enquiry on 29.8.1999. Be that as it is, when the respondent already conducted enquiry on 17.7.1995 and did not pass any orders under Section 28-A of the Act, nothing prevented the petitioners to approach the Court immediately but they waited till 2000 and filed the writ petition. In such a case, a period of six months would be a proper period of limitation, as held by a seven-Judge Bench of Supreme Court in **S.S. Rathore v. State of M.P.**. It was held therein.

> It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation.

As rightly pointed out by the learned Assistant Government Pleader in either challenging the notification under the Act or in challenging the award – if such a challenge is maintainable – delay and laches play a crucial role. A reference may be made to **State of Maharashtra v. Digambar** (supra), **C. Padma v. Dy. Secretary to the Government of Tamilnadu** (supra) and **Municipal Council, Ahmednagar v. Shah Hyder Baig** (supra).

In **State of Maharashtra v. Digambar** (supra) it was held:

> In our view, the above allegation is in no way sufficient to hold that the writ petitioner (respondent here) has explained properly and satisfactorily the undue delay of 20 years which had occurred between the alleged taking of possession of his land and the date of filing of writ petition in the High Court. We cannot overlook the fact that it is easy to make such kind of allegations

against anybody that too against the State. When such general allegation is made against a State in relation to an event said to have occurred 20 years earlier, and the State's non-compliance with petitioners demands, State may not at all be in a position to dispute such allegation, having regard to the manner in which it is required to carry on its governmental functions. **Undue delay of 20 years on the part of the writ petitioner, in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution for grant of compensation to his land alleged to have been taken by the Governmental agencies, would suggest that his land was not taken at all, or if it had been taken it could not have been taken without his consent or if it was taken against his consent he had acquiesced in such taking and waived his right to take compensation for it**.

(emphasis supplied)

In **C. Padma v. Dy.Secretary to the Government of Tamil Nadu** (supra), the Supreme Court held:

….It is seen that after the notification in GOR 1392 dated 17.10.1992 was published, the acquisition proceeding had become final, the compensation was paid to the appellants' father and thereafter the lands stood vested in the State. In terms of the agreement as contemplated in Chapter VII of the Act, the Company had delivered possession subject to the terms and conditions thereunder. It is seen that one of the conditions was that on cessation of the public purpose, the lands acquired would be surrendered to the Government. In furtherance thereof, the lands came to be surrendered to the Government for resumption. The lands then were allotted to SRVS Ltd., 5th respondent which is also a subsidiary amalgamated company of the original company. Therefore, the public purpose for which acquisition was made was substituted for another public purpose. Moreover, the question stood finally settled 32 years ago and hence the writ petition cannot be entertained after three decades on the ground that either original purpose was not public purpose or the land cannot be used for any other purpose.

In **Municipal Council, Ahmednagar v. Shah Hyder Baig** (supra), the Supreme Court considered the effect of delay in exercise of jurisdiction under Article 226 and held:

… It is now a well settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period, the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law Courts under Artit.226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, 'delay defeats equity' has its fullest application in the matter of grant of relief under Art. 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of

grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.

The conduct of the petitioners in not approaching this Court immediately after waiting for some time for the orders of the respondent herein or at least in 1995 when the respondent allegedly conducted enquiry, would certainly show that the petitioners are not entitled for any relief in this writ petition. The notification was issued in 1977 and award was passed in 1980. The civil court decided the matter in 1992. Therefore, if the applications filed by the petitioners are entertained after long lapse of 25 years after acquisition, it would certainly cause prejudice to the State. Section 28-A of the Act, which permits redetermination, was not intended for consideration of all the claims of land owners even after lapse of 25 years. The writ petition is devoid of any merits.

In the result, for the above reasons, the writ petition fails and is accordingly dismissed. There shall be no order as to costs.

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(V.V.S.RAO,J)

.11.2005.

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